

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Yu et al.
Title: TUMOR NECROSIS FACTOR-GAMMA
Appl. No.: 09/899,059
Filing Date: 7/6/2001
Patent No.: 7,597,886 B2
Grant Date: 10/6/2009
Examiner: Romeo, David S.
Art Unit: 1647
Confirmation Number: 5121

**RESPONSE TO CORRECTED DECISION ON REQUEST FOR
RECONSIDERATION OF PATENT TERM ADJUSTMENT**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully thank the Examiner for the Corrected Decision, dated September 28, 2010, regarding Applicants' previous request for reconsideration of the Patent Term Adjustment (PTA) determined for the captioned patent, which issued on October 6, 2009, as U.S. Patent No. 7,597,886 B2.

Applicants respectfully disagree.

Applicants have finalized and recalculated the PTA for the captioned patent under the Court of Appeals for the Federal Circuit's ("the court's") interpretation of the PTA statute, and have determined that the final PTA for the above-referenced patent should be **2022** days of PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

A. PTA Calculation

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B): 2434 days

(b) Total Applicant delay: 406 days

Final PTA Determination: ***2028 days**

*Applicants do not disclaim the 6 days between the Notice of Appeal filing and receipt of the Notice of Allowance.

Applicants respectfully request that the patent be accorded **2022** days PTA.

The patent is not subject to a terminal disclaimer.

B. Applicants summarize the Examiner's PTA calculations:

1469 examination delay, plus 825 B-Delay, which totals 2294 days, minus Applicant's delay of 406, equals 1888 days PTA.

C. Applicants' PTA calculation is summarized as follows:

1469 examination delay, plus 825 B-Delay, plus 134 days that DO NOT OVERLAP between 2/23/2004 and 7/6/2004 (2/23/2004 being 4 months after the filing of a restriction response up to when the 3 year period started, *i.e.*, 7/6/2004), resulting in a calculation of 1609 examination delay plus 825 B-Delay, equals 2434, minus Applicant's delay of 406, equals 2028 (2028 minus the 6 days which are excluded equals 2022 PTA days).


Applicants believe that no fee is due with this response. However, if a fee is due with this response, the Commissioner is authorized to charge the fees to Deposit Account No. 19-0741, or credit any overpayment. However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

If the Office has any questions regarding this Request, please contact the undersigned.

Respectfully submitted,

Date: October 26, 2010

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By 

Michele M. Simkin
Attorney for Applicant
Registration No. 34,717

Patent Term Adjustment Calculation System

Docket Number: 075977-0122
Application Number: 09/899059
Patent Number: N/A

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Application Filing Date	07/06/2001	0		
	14 month From Application date	09/06/2002	427		
Edit Delete	Restriction Requirement	09/23/2003	809	382	
Edit Delete	Restriction Requirement Response Received at PTO	10/23/2003	839		
	Restriction Requirement Response Filed + 4 months	02/23/2004	962		
	3 Year Period Starts	07/06/2004	1,096		
Edit Delete	Restriction Requirement	02/14/2007	2,049	(1087)	
	Restriction Requirement + 3 months	05/14/2007	2,138		
Edit Delete	Restriction Requirement Response Received at PTO	06/14/2007	2,169		31
Edit Delete	Non-Final Office Action	09/05/2007	2,252		
	Non-Final Office Action + 3 months	12/05/2007	2,343		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	03/04/2008	2,433		
Edit Delete	Notice of Non-Compliance	06/26/2008	2,547		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	08/08/2008	2,590		(247), (157)
Edit Delete	IDS under 1.704(c)(8) filed at PTO	10/08/2008	2,651		(218), (61) 308
Edit Delete	Final Office Action	11/26/2008	2,700		
Edit Delete	Final Office Action Response Received at PTO	02/26/2009	2,792		
	Final Office Action + 3 months	02/26/2009	2,792		
Edit Delete	Advisory Action	03/24/2009	2,818		
Edit Delete	Final Office Action Response Received at PTO	04/27/2009	2,852		(60), (60), (60) 60
	3 Year Period Paused	05/21/2009	2,876	(1780) 1914	
Edit Delete	Notice of Appeal Received at PTO	05/22/2009	2,877		
	3 Year Period Resumed	05/26/2009	2,881		
Edit Delete	Notice of Allowance	05/27/2009	2,882	(6)	
Edit Delete	Rule 312 Amendment Received at PTO	07/23/2009	2,939		
Edit Delete	Response to Rule 312 Communication Received	07/29/2009	2,945		7
Edit Delete	Issue Fee Paid	08/11/2009	2,958		
Edit Delete	Patent Grant Date	10/06/2009	3,014	(133) 138	
				Totals:	2,434
				PTA:	2,028
					406



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MAILED
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OFFICE OF PETITIONS


In re Patent No. 7,597,886 : CORRECTED DECISION ON REQUEST
Yu et al. : FOR
Issue Date: October 6, 2009 : RECONSIDERATION OF
Application No. 09/899,059 : PATENT TERM ADJUSTMENT
Filed: July 6, 2001 : and
Atty Docket No. 075977-0122 : NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

A petition pursuant to 37 C.F.R. § 1.705(b) was filed on December 4, 2009, requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by two thousand and thirty-five (2035) days. A decision was mailed on September 7, 2010, which indicated that the petition was granted to the extent that the patent term is extended or adjusted by one thousand, eight hundred and sixty-one (1861) days.

The decision set forth, *in pertinent part*:

The time taken up by the notice of appeal is excluded from the period of B-delay. A notice of appeal was filed on May 22, 2009 and a notice of allowance was subsequently mailed on June 23, 2009 (emphasis added). The 33 days of the over three year period consumed by appellate review, beginning on May 22, 2009 and ending on June 23, 2009, is not included in the B delay. See 35 U.S.C. § 154(b)(1)(B)(ii). Thus, 33 days are excluded.

Patentee telephoned Paul Shanowski on September 17, 2010, and indicated that the notice of allowance was mailed not on July 23, 2009, but rather on May 27, 2009. A review of the electronic record establishes that this assertion is accurate.



It follows that the above-reproduced paragraph should have read as follows:

The time taken up by the notice of appeal is excluded from the period of B-delay. A notice of appeal was filed on May 22, 2009 and a notice of allowance was subsequently mailed on May 27, 2009. The 6 days of the over three year period consumed by appellate review, beginning on May 22, 2009 and ending on May 27, 2009, is not included in the B delay. See 35 U.S.C. § 154(b)(1)(B)(ii). Thus, 6 days are excluded.

As such, the patent term adjustment is increased by 1888 (1469 examination delay + 825 B-delay (1918 over three years - 1087 overlap - 6 days which are excluded) - 406 applicant delay) days.

The portions of the decision that was mailed on September 7, 2010 which indicated that the period of exclusion is 33 days, and the patent term adjustment is increased by 1861 days, are **VACATED**.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 C.F.R. § 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, Patentee is given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand, eight hundred and eighty-eight (1888) days**.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3225.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,597,886 B2

DATED : October 6, 2009

DRAFT

INVENTOR(S) : Yu et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 1443 days

Delete the phrase "by 1443 days" and insert – by 1888 days--